

REMARKS

The amendments set out above and the following remarks are believed responsive to the points raised by the Office Action dated July 17, 2008. Reconsideration is respectfully requested.

Claims 1-43 and 45-48 are pending in the present application. Claims 22-31 have been withdrawn from consideration by the Examiner. Claims 1, 17, 32, 38, 40, 41, and 42 have been amended to describe the invention more clearly. No new matter has been added, the basis for the amended claim language may be found within the original specification, claims and drawings.

Claims 1-21, 32-43, and 45-48 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims have been amended in accordance with the suggestions provided by the Examiner to improve the form of the claims and more distinctly claim the subject matter which Applicants regard as their invention. Thus, it is respectfully submitted that with these amendments to the claims, the basis for rejection under 35 U.S.C. §112 has now been overcome and should be withdrawn.

Claims 1-21, 39 and 47 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,491,326 to Massey et al. (hereinafter referred to as "Massey") in view of U.S. Patent No. 6,684,571 to Hendrickson et al. (hereinafter referred to as "Hendrickson") and U.S. Patent No. 3,491,584 to Selzer (hereinafter referred to as "Selzer"). This rejection is respectfully traversed.

None of the cited references disclose, teach or suggest, among other things, "a spacer having a distal end, the spacer protruding outwardly from a major surface of the side portion in a direction that is substantially parallel to the interior flange and substantially perpendicular to said major surface for preventing the outer edge of the passive door from contacting the major surface of the side portion of the frame and for allowing air flow between the outer edge of the passive door and the side portion of the frame when the astragal assembly is affixed thereto" or "a wooden insert retained within the elongated open channel in the frame" as recited in pending independent claim 1.

According to the Office Action it would have been obvious to one of ordinary skill in the art to provide Massey et al. with a spacer, as taught by Selzer, to maintain the astragal in good operative engagement with the door. Applicants respectfully disagree.

Selzer is directed to a door with an outer metal facing and the alleged spacer 82 is a prong for slideable engagement with a complementary shaped slot provided in a door frame side jamb to attach metal facing members to the door jambs (see e.g., col. 4, lines 49-52). Selzer does not disclose, suggest or even mention an astragal or a spacer, let alone a spacer for preventing an astragal assembly from contacting the outer edge of a door or for allowing air flow between the astragal assembly and the outer edge of a passive door. Rather Selzer merely discloses a prong 82 which fits in a corresponding slot for attaching metal facing members to a door frame side jamb. Although the Figures of Selzer show that the positioning of the prong in the door jamb creates a gap between the metal facing and the door jamb no explanation is provided for this gap and indeed the gap is not even mentioned. It appears from the Figures that such a gap may be necessary for alignment purposes, i.e. so that the metal facings of the door are aligned with the metal facing of the door jamb to allow the door to close properly. However, this need for a gap would not be present in Massey, and thus, one skilled in the art would find no suggestion to use such a prong and slot arrangement to attach the astragal in Massey to a door. Indeed, Massey discloses that the astragal includes a recess 23 defined along the inactive side of the frame sized and shaped *to receive the inside vertical edge of the inactive door*. Thus, one of ordinary skill in the art reading Massey and Selzer would find no teaching or suggestion to replace the screws of Massey with the prong and slot of Selzer or to prevent the astragal from contacting the edge of a door. It is only by using Applicants disclosure that the motivation is found to utilize a spacer when connecting an astragal assembly to the edge of a door. Accordingly, it appears that the rejection is based on impermissible hindsight and therefore should be withdrawn.

The Office Action also asserts that it would have been obvious to one of ordinary skill in the art to provide the insert of Massey with a wood construction, as taught by Hendrickson to improve the aesthetics of the astragal assembly. Applicants respectfully disagree.

Hendrickson is directed to a window jamb and to improving the appearance of window jambs by forming them to blend into their surroundings. Hendrickson discloses that,

"The upper jamb filler 76a is intended to match in appearance the interior trim of the double hung window 10. Typically a wood construction is desirable, although not so limited. The critical consideration is that a neat, clean, high quality, low maintenance finish is provided, *consistent with the interior finish of the window*" (col. 5, lines 12-17).

Thus, Hendrickson teaches that the aesthetics are improved by providing a finish that is consistent with the surrounding finish.

The insert 25 of Massey comprises a decorative flush bolt cover plate adapted to be snapped onto the flush bolt to cover and hide the flush bolt assembly (Massey col. 8, lines 29-33). The astragal of Massey comprises a frame formed most preferably from extruded aluminum or less preferably from steel or plastic (see e.g., col. 5, lines 64-67). Thus, the finish surrounding the decorative flush bolt cover plate 25 of Massey comprises a metallic finish (or possibly plastic). Accordingly, one skilled in the art reading Hendrickson and wishing to improve the aesthetics of the astragal of Massey would be led to utilize a decorative flush bolt cover plate made from extruded aluminum, and not wood. Furthermore, it seems unlikely that a decorative flush bolt cover plate adapted to be snapped onto the flush bolt could even be formed of wood. In summary, there is nothing in the cited references that would lead one of ordinary skill in the art to replace the metal flush bolt cover plate of Massey with a wood cover plate.

Accordingly, for at least these reasons it is respectfully submitted that independent claim 1 and those claims depending therefrom are patentable over the cited references.

Claims 32-35, 37 and 38 were rejected under 35 U.S.C. §103(a) as being unpatentable over Massey in view of Selzer.

None of the cited references disclose, teach or suggest, among other things, "a spacer having a distal end, the spacer protruding from the major surface of the side portion in a direction that is substantially perpendicular to the major surface and

substantially parallel to said interior flange; and an insert member retained substantially within a channel in the frame formed by the exterior portion, the interior portion and the side portion, wherein the insert member presents an outer surface for attachment to hardware, and the spacer extends away from the channel" and "a strike plate secured to the insert member", as recited in pending independent claim 32 and dependent claim 37.

According to the Office Action, Massey discloses "an insert member 25 retained substantially within a channel in the formed by the exterior portion, the interior portion and the side portion, wherein the insert presents an outer surface for attachment to hardware" and "a strike plate 21 secured to the insert member". Applicants respectfully disagree.

As explained above, the insert member 25 of Massey comprises a decorative flush bolt cover plate adapted to be snapped onto the flush bolt to cover and hide the flush bolt assembly. There is no disclosure, teaching or suggestion in Massey that the cover plate 25 presents an outer surface for attachment to hardware or that a strike plate is secured to the bolt cover plate. Rather, with respect to the flush bolt cover plate, Massey merely teaches that it is adapted to hide the flush bolt assembly within the frame and to provide a pleasing aesthetic appearance to the inside edge of the astragal assembly (col. 8, lines 29-33).

As also explained above, one of ordinary skill in the art would find no teaching, suggestion or reason to provide Massey with a spacer as allegedly taught by Selzer to maintain the astragal in good operative engagement with a door.

For at least these reasons, it is respectfully submitted that independent claim 32 and those claims depending therefrom are patentable over the cited references.

Claim 36 was rejected under 35 U.S.C. §103(a) as being unpatentable over Massey in view of Selzer and Hendrickson. According to the Office Action it would have been obvious to one of ordinary skill in the art to provide the insert of Massey with a wood construction, as taught by Hendrickson to improve the aesthetics of the astragal assembly. Applicants respectfully traverse the rejection.

As pointed out above, Hendrickson teaches that the aesthetics related to window jambs are improved by providing a finish that is consistent with the surrounding finish.

Hendrickson therefore teaches using jamb fillers made of wood to match the wood finish of the window. Thus, one skilled in the art reading Hendrickson and wishing to improve the aesthetics of the extruded aluminum astragal of Massey would not be led to replace the extruded aluminum decorative cover plate with wood, since this would be in direct contrast to the teaching of Hendrickson. Accordingly, claim 36 is patentable not only because it depends from novel and non-obvious independent claim 32, but because it defines a limitation not taught by the cited references.

Claims 40, 46, and 48 were rejected under 35 U.S.C. §103(a) as being unpatentable over Massey in view of Hendrickson. This rejection is respectfully traversed.

None of the references cited disclose, teach, or suggest, among other things, "a wooden insert disposed in the metallic frame between the interior portion, the exterior portion, and the side portion thereof; and at least one elongated spacer extending directly from said side portion and having a distal end that engages said wooden insert, said at least one spacer maintaining said wooden insert in position within said opening" or "a hardware component disposed in the wooden insert at the opening in the metallic frame".

Contrary to the assertion in the Office Action, Massey does not disclose at least one elongated spacer extending directly from said side portion and *having a distal portion that engages said insert, said at least one spacer maintaining said wooden insert in position within said opening*. The alleged spacer identified by the Office Action (marked up Figure 24; OA pg. 11) does not have a distal end that engages the alleged insert 25. The alleged insert 25 of Massey comprises a decorative flush bolt cover plate adapted to be snapped onto the flush bolt to cover and hide the flush bolt assembly. The bolt cover plate 25 is not engaged by the alleged spacer, nor is it maintained in position by the alleged spacer.

Furthermore, as explained above, there is no disclosure, teaching or suggestion to replace the extruded aluminum bolt cover plate of Massey with a wood construction to improve aesthetics. It would, in fact, be directly contrary to the teaching of the relied upon reference (Hendrickson). Thus, for at least these reasons it is submitted that

independent claim 42 and those claims depending therefrom are patentable over the cited references.

Dependent claim 46 is also allowable, not only because it depends from novel and non-obvious independent claim 42, but it also defines limitations not taught by the cited references. For example, none of the cited references disclose an astragal assembly including a hardware component disposed in a wooden insert at the opening in a metallic frame. Contrary to the assertion in the Office Action, hardware component 46 of Massey is not disposed in insert 25. Rather, as seen in Figure 2 of Massey, the bolt cover plate 25 snaps over and hides the guide block 46 of the elongated flush bolt assembly. Thus, Massey does not include a hardware component *disposed in an insert* at the opening in a metallic frame.

For the reasons set forth above, reconsideration of each of the rejections is respectfully requested.

In view of the amendment and remarks recited herein, the application is considered in good and proper form for allowance, and the Examiner is respectfully requested to pass this application to issue. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

It is believed that no fee has been incurred by this Amendment. If this is incorrect, please charge any fees to debit Deposit Account 50-0548 and notify the undersigned attorney.

Respectfully submitted,



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